

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JONAH BURNING BREAST,

Plaintiff,

vs.

OFFICER 1, Peace Officer, Rapid City, SD
Pennington County, in his or her individual and
official capacity; OFFICER 2, Peace Officer,
Rapid City, SD Pennington County, in his or her
individual and official capacity; OFFICER 3,
Peace Officer, Rapid City, SD Pennington
County, in his or her individual and official
capacity; OFFICER 4, Peace Officer, Rapid
City, SD Pennington County, in his or her
individual and official capacity,

Defendants.

5:23-CV-05021-LLP

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND REQUIRING
PLAINTIFF TO PAY AN INTIAL PARTIAL
FILING FEE

Plaintiff, Jonah Burning Breast, an inmate at the Pennington County Jail, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc. 1. Burning Breast moves for leave to proceed in forma pauperis and has included his prisoner trust account report. Docs. 2, 3.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Burning Breast filed a prisoner trust account report that shows his average monthly deposits for the past six months as \$38.35 and his average monthly balance for the past six months as \$39.38. Doc. 3 at 1. Based on this information, the Court grants Burning Breast leave to proceed in forma pauperis. Burning Breast must pay the initial partial filing fee of \$7.88, which is 20 percent of his average monthly balance for the past six months (\$39.38). Burning Breast must pay his initial partial filing fee of **\$7.88 by May 12, 2023**. Failure to pay the filing fee by May 12, 2023, will result in dismissal without prejudice of Burning Breast's complaint.

In order to pay the remainder of his filing fee, Burning Breast must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure.

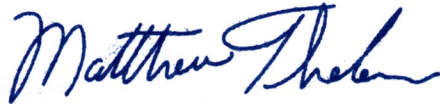
The clerk of the court will send a copy of this order to the appropriate financial official at plaintiff's institution. Burning Breast will remain responsible for the entire filing fee as long as he is a prisoner, even if the case is dismissed at some later time. *See In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997).

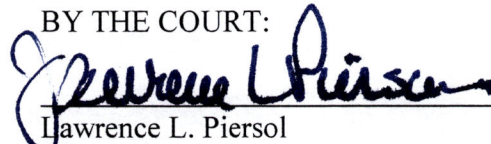
Thus, it is ORDERED:

1. That Burning Breast's motion to proceed in forma pauperis (Doc. 2) is granted.
2. Burning Breast must pay his initial partial filing fee of **\$7.88 by May 12, 2023**, or his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after he pays his initial partial filing fee.
3. That the institution having custody of Burning Breast is directed that whenever the amount in Burning Breast's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Burning Breast's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1) until the \$350 filing fee is paid in full.

DATED April 17, 2023.

ATTEST:
MATTHEW W. THELEN, CLERK



BY THE COURT:

Lawrence L. Piersol
United States District Judge